

Interim Review of
Right-of-Way Acquisition and
Construction of the Southbound I-405
HOV Auxiliary Lane,
from Waterford Street to I-10

08-CAL-G04

DECEMBER 2008

MOU P0008354



Metro

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EXECUTIVE SUMMARY

At the request of the Project Manager, Robert Machuca, an interim review was completed by Los Angeles County Metropolitan Transportation Authority (Metro) Management Audit Services (Management Audit) for the Improvement Program (TIP) call for Memorandum of Understanding (MOU) P0008354. This MOU is with State of California, Department of Transportation (Caltrans) for Right-of-Way Acquisition and Construction of High Occupancy Vehicle (HOV) and auxiliary lane on Southbound Interstate 405 from Waterford Street to Interstate 10.

The estimated total project cost of the MOU is \$50,023,000. The scope of this review is limited to the Construction portion of the MOU. The estimated total project cost for the Construction Capital component of the MOU is \$36,900,000, which is comprised of \$9,648,000 or 26.1 percent of Prop C 25 percent, and \$27,252,000 or 73.9 percent of Grant Anticipation Revenue Vehicle (GARVEE) Bonds. This review is based on the original MOU and amendment one which were in effect during the period of this review.

The total project cost of \$32,157,542 was incurred from inception of the MOU to July 27, 2007. We did not question any of the incurred project cost. The allowable project cost is \$32,157,542. Metro's share is \$8,393,118, or 26.1 percent. Caltrans was reimbursed \$7,937,881 and no retention was withheld. Therefore, the remaining balance on this MOU is \$1,710,119 (\$9,648,000 - \$7,937,881). Caltrans under-ran the project cost by \$455,237 (\$8,393,118 - \$7,937,881).

During our review we found that Caltrans unilaterally decreased the Prop C 25 percent funding requirement in their billings to 24.9 percent and did not use the 26.1 percent as required by the MOU. This caused Caltrans to under-run the project cost by \$455,237. Caltrans' representative advised us that the construction bid cost was lower than originally forecasted (see "Results of Review" section of this report) creating the need to lower the Prop C 25 percent funds allocation percentage. Caltrans did not comply with the MOU terms for changing the allocation percentage. The MOU terms requires written agreement between both parties. We were advised that Metro's Project Manager is currently coordinating with Caltrans' Project Manager to amend the MOU to reflect the reduction in the Prop C 25 percent allocation.

INTRODUCTION

Background

This MOU is between the Caltrans and Metro. The objective of the project is Right-of-Way Acquisition and Construction of the Southbound Interstate 405 HOV and an auxiliary lane from Waterford Street to Interstate 10. The project will alleviate recurring congestion at this location and minimize excessive weaving and merging traffic through this segment of

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Interstate 405. The total estimated project cost is \$50,023,000 and Metro's share is \$9,648,000. The MOU commenced on June 30, 2004 and lapsing on June 30, 2009.

Objectives

The audit objectives were to:

- Determine the allowability, allocability and reasonableness of the incurred cost.
- Determine whether costs incurred and billed were allowable under relevant cost standards and in compliance with the specific general terms of the MOU and project management guidelines.
- Determine whether costs incurred were properly and accurately charged to the MOU, were reasonable in amount, and were supported by documented evidence.
- Determine whether costs were properly recorded for reimbursement purposes and that reimbursements were received by Caltrans and the Metro's accounting records properly reflect these transactions.
- Determine whether invoices were submitted within the lapsing date and within the period for which the funds were programmed.

Scope

The scope of this review is limited to the Construction portion of the MOU. We reviewed the amount invoiced by the Caltrans for costs incurred in the performance of the MOU. The invoices were submitted between August 5, 2005 and August 1, 2007. We also reviewed the amounts paid to Caltrans as of August 27, 2007.

We conducted this attestation review in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our review objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our review objectives. We used the cost principles contained in the Federal Acquisition Regulation (FAR) Subparts 30 and 31, and the MOU Provisions to evaluate and analyze the incurred cost.

The cost claimed is the responsibility of Caltrans. Our responsibility is to express a conclusion based on the review. The review report is intended solely for the use of management and should not be used for any other purpose without first consulting Management Audit.

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Methodology

We selected invoices submitted by Caltrans and traced various costs included on the invoices to supporting documentation such as vendor's invoices. We reviewed the costs for allowability in accordance with applicable cost standards and compliance with the terms and conditions of the MOU. We also reviewed accounting and grant records to determine if the amounts claimed for reimbursement, as represented by the invoices submitted by Caltrans, were actually paid.

RESULTS

Conclusion

Project Cost

The total allowable project cost incurred by Caltrans was \$32,157,542 for the period under review. Our share in Prop C 25 percent funds is \$8,393,118, or 26.1 percent. Caltrans was reimbursed \$7,937,881 of the \$9,648,000 programmed Prop C 25 percent funds and to date no retention was withheld. The remaining balance on this MOU is \$1,710,119 (\$9,648,000 - \$7,937,881) as of August 27, 2007. We will determine final balance of the MOU when we perform close-out review.

Compliance with MOU Terms

During the period under review, Caltrans has under-run the project cost by \$455,237 (\$7,937,881 - \$8,393,118). We were advised by Caltrans that the estimated construction cost for this project was lower than originally anticipated. Therefore, Caltrans unilaterally revised the MOU funding allocation by reducing the project cost from \$36,900,000 to \$36,310,000 without written agreement from our Project Manager. Since GARVEE bonds fund can not be reduced, Caltrans reduced the Prop C fund from \$9,648,000 to \$9,058,000 reducing the allocation percentage for Prop C from 26.1 to 24.9 percent resulting in funds that may be eligible for reprogramming to other projects. See appendix for detailed result of review.

Section 11.1 of Part II – General Terms of the Funding Agreement (FA), of the MOU states, *"This FA, and its Attachments and the reference Guidelines, constitute the entire understanding between the parties with respect to the Project and the Funds. The FA shall not be amended, nor any provisions or breach hereof waived, except in writing signed by the parties."* Caltrans is not in compliance with the MOU terms and conditions.

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Recommendation

We recommend that Caltrans comply with the terms of the MOU and obtain mutual agreement in writing with Metro in regards to any changes to the funding allocation. We also recommend that a close out review be conducted as early as possible to confirm whether there is a Prop C fund balance remaining on this project that is eligible for reprogramming to other projects.

Management Response

Metro Project Manager concurred with the results and recommendations of the audit.

Caltrans' Response:

In Caltrans' letter dated November 7, 2008, Caltrans disagreed with the recommendation to obtain mutual agreement in writing in regards to any changes to the funding allocation. Caltrans' response stated that, *"Caltrans reduced the project costs because the lowest bidder for construction was less than the programmed amount. Whenever there is a small savings on the contract, Caltrans is not required to go back to the California Transportation Commission for approval or to renegotiate the MOU."* Please see Appendix B for the letter.

Auditors' Rejoinder:

We disagree with Caltrans' explanation. The General Terms of the MOU states that any changes to the Funding Agreement (FA) shall not be amended without written agreement signed by both parties. Caltrans unilaterally decreased funding allocation percentage for Prop C 25 percent fund for this MOU.

Rent and Telephone Expenses

Caltrans does not have an allocation plan to allocate rent and telephone expenses incurred by the Resident Engineer's (RE) office to fairly allocate these costs for projects sharing the same project field office. The current practice is to arbitrarily charge rent and telephone expenses by randomly selecting projects to charge through out the fiscal years. There is no matching of these expenses to applicable projects in an objective and reasonable manner.

Contract Term Part II, section 5.2 of this MOU stated that Metro shall used applicable Federal Acquisition Regulations (FAR) in determining the reasonableness of project costs incurred. FAR Subpart 31.201-4, Determining allocability, states, *"A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it—(b) Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received..."*

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RESULTS

Caltrans did not allocate these expenses to the MOU on the basis the benefit received by the applicable project. We believe by not having a proper allocation plan, rent and telephone expense for this project could result in over billing of project expense to Metro. For this MOU, the cost associated with the project is considered immaterial. However, we believe it should be noted in the event future cost becomes significant.

Recommendation

We recommend that Caltrans establish an allocation plan to allocate office and telephone expenses to the construction projects based on a beneficial and causal relationship.

Management Response

Metro Project Manager concurred with the results and recommendations of the audit.

Caltrans' Response:

In Caltrans' letter dated November 7, 2008, Caltrans agreed with our recommendation and stated that, "*Caltrans will consider a method that will charge these expenses to the on-going projects in a fair and objective manner.*" Please see Appendix B for the letter.

Cellular Phone Expense

During our review, we found that Caltrans does not have a formal policy and procedures in place to document personal phone calls on phones provided to Caltrans' field personnel. We believe it's essential to monitor and document personal cellular phone usage to capture true monthly usage on official business related to the project. By not having procedure in place to take out the cost associated with these personal calls, it could result in over-billing project expenses to us.

The other terms and conditions under Section 11.6 of this MOU states, "*STATE shall comply with and ensure that work performed under this FA is done in compliance with this FA, GAAP, all applicable provisions of federal and state laws, statutes, rules, regulations and procedural requirements, including the Federal Acquisition Regulations (FAR).*" Lack of substantiation on cellular phone usage by employees is in noncompliance with Internal Revenue Code (IRC). IRC §274(d)(4) states, "*No deduction or credit shall be allowed..., with respect to any listed property, unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement.*" Due to immateriality of this cost component in comparison to the total construction cost we did not calculate the financial impact to this MOU.

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Recommendation

We recommend that Caltrans establish a procedure in capturing official business related cellular phone cost to their construction projects.

Management Response

Metro Project Manager concurred with the results and recommendations of the audit.

Caltrans' Response:

In Caltrans' letter dated November 7, 2008, Caltrans disagreed with the recommendation. Caltrans' response states, *"usage of cell phones provided by the State is strictly for State business only. Therefore, Caltrans does not have or need procedures for requiring employees to document personal phone calls."* Please see Appendix B for the letter.

Auditors' Rejoinder:

We disagree with Caltrans' explanation. In follow up with Caltrans Audit and Investigation personnel we were advised that there has been no internal review conducted on employees' cellular phone usage. We recommend Caltrans conduct an internal review on employee cellular phone usages. We believe it could impact the determination of project cost in the event future cost becomes significant.



ruthe holden
Fri Dec 12 14:34:21 2008

Ruthe Holden
Chief Auditor
December 2008

Audit Team:
Rey Alimoren
Andrew Lin
Kathy Knox
Ruth Holden

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APPENDIX A

Description	Budgeted Costs	Percent n	Total Project Cost Per PCS	Audited Project Cost	Payments	Over/ (Under)-run
	<i>a</i>		<i>b</i>	<i>c</i>	<i>d</i>	<i>d - c</i>
MTA Programmed Funds						
Construction						
Prop C 25 Percent	\$ 9,648,000	26.1%	\$ 8,393,118	\$ 8,393,118	\$7,937,881	\$(455,237)
GARVEE Bonds	27,252,000	73.9%	23,764,424	23,764,424		
Total	\$ 36,900,000	100.0%	\$ 32,157,542	\$ 32,157,542	\$7,937,881	\$(455,237)
			<i>Remaining Balance (a - d)</i>		\$1,710,119	

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APPENDIX B

AUDITS AND INVESTIGATIONS
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SACRAMENTO, CA 94274-0001
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*"Flex your power"
Be energy efficient"*

November 7, 2008

Robert Machuca, Project Manager
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza (MS 99-22-2)
Los Angeles, CA 90012-2952

Dear Mr. Machuca:

Thank you for the opportunity to respond to the draft audit report on the interim audit performed on Memorandum of Understanding (MOU) P0008354 between the Los Angeles County Metropolitan Transportation Authority (Metro) and the California Department of Transportation (Caltrans). The purpose of this MOU was for Right-of-Way Acquisition and Construction of the High Occupancy Vehicle (HOV) Auxiliary Lane on Southbound Interstate 405 from Waterford Street to Interstate 10.

The purpose of the interim audit was to determine the allowability, allocability, and reasonableness of the incurred costs for the period of August 5, 2005, through August 27, 2008. The scope of this review was limited to the construction portion of the MOU. The estimated total project cost for the construction component of the MOU is \$36,900,000.

The auditors concluded that total project costs of \$32,157,542 were incurred from inception of the MOU to July 27, 2007, and are not questioning any of the incurred project costs. However, the auditors found the following:

1. Caltrans unilaterally revised the MOU funding allocation by reducing the project costs from \$36,900,000 to \$36,310,000 because the construction cost was lower than originally anticipated.
2. Caltrans does not have an allocation plan to allocate rent and telephone expenses incurred by the Resident Engineer's (RE) office to fairly allocate these costs for projects sharing the same project field office.
3. Caltrans does not have a formal policy and procedures in place to document personal phone calls on phones provided to Caltrans' field personnel.

The auditors are recommending that a close-out review be conducted as early as possible to determine whether any money is eligible for reprogramming to other projects. In addition, the auditors have specific recommendations to address the issues listed above.

"Caltrans improves mobility across California"

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APPENDIX B

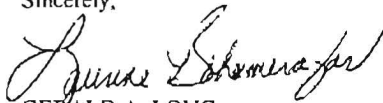
Robert Machuca, Project Manager
November 7, 2008
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Caltrans agrees that a close-out review be conducted as early as possible because it would be beneficial to both parties. In addition, Caltrans has the following responses to the issues identified:

1. Caltrans reduced the project costs because the lowest bidder for construction was less than the programmed amount. Whenever there is a small savings on the contract, Caltrans is not required to go back to the California Transportation Commission for approval or to renegotiate the MOU.
2. Caltrans has been consistent in rotating expenses for rent and telephone expenses among all the projects being managed out of the same RE office. Although the amount is minimal, compared to the total project costs, Caltrans will consider a method that will charge these expenses to the on-going projects in a fair and objective manner
3. Usage of cell phones provided by the State is strictly for State business only. Therefore, Caltrans does not have or need procedures for requiring employees to document personal phone calls.

For a complete response to the recommendations, please see the attachment. Caltrans appreciates the opportunity to respond to the draft report. If you have any questions, or require additional information, please contact Laurine Bohamera, Chief, Internal Audits, at (916) 323-7107, or Juanita Baier, Audit Supervisor, at (916) 323-7951.

Sincerely,



GERALD A. LONG
Deputy Director
Audits and Investigations

Attachment

- c. Ruthe Holden, Chief Auditor, Metro
Kathy Knox, Supervising Auditor, Metro
Tad Teferi, Deputy District 7 Director, Program & Project Management
Clark Paulsen, Chief, Division of Accounting

APPENDIX B

State of California
DEPARTMENT OF TRANSPORTATION


Attachment
Business, Transportation and Housing Agency

Memorandum

*Flex your power!
Be energy efficient!*

To: GERALD A. LONG
Deputy Director
Audits and Investigations

Date: November 3, 2008

From: TAD TEFFERY 
District 7 Deputy Director
Program/Project Management

Subject: Los Angeles County Metropolitan Transportation Construction of HOV Auxiliary Lane on
Southbound I-405 Waterford Street to I-10 - MOU P0008354 - EA 07-195904

The Los Angeles County Metropolitan Transportation Agency (Metro) audit identifies following Caltrans questionable undertaking:

- **Audit Finding:** "Caltrans unilaterally revised the MOU funding allocation by reducing the project cost from \$36,900,000 to \$36,310,000 without written agreement from our Project Manager"

The lowest bidder was less than the MOU amount (programmed amount) which resulted in a saving of capital cost. The Department is not required to go back to CTC or renegotiate the MOU whenever there is a small saving on the contract.

The audit finding reference to section 11.1 of Part II - General Terms of the Financial Agreement (FA). "This FA and its Attachments and the reference Guidelines, constitute the entire understanding between the parties with respect to the Project and the Funds. The FA shall not be amended, nor any provisions or breach hereof waived, except in writing signed by the parties." has not been violated. The intention of this section is both parties have to approve changes that are beyond the original scope of the MOU, either in term of project cost or schedule. The project cost in this case was entirely within the programmed amount, thus it should not require an adjustment to MOU in writing.

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Attachment

GERALD A. LONG
February 20, 2008
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- **Audit Finding:** "Caltrans does not have an allocation plan to allocate rent and telephone expenses incurred by the Resident Engineer's (RE) office to fairly allocate these costs for projects sharing the same project field office."

Audit Recommendation "...that Caltrans establish an allocation plan to allocate office and telephone expenses to the construction projects based on a beneficial and causal relationship.

District 7 Construction Office has been using a simplified but transparent process to allocate office rent and telephone expense to on-going projects at each construction field office. As the office rent and phone expenses are very small in comparison with project cost, the charging is done by rotating the invoices monthly among on-going projects.

District 7 Construction Office is currently working on a more comprehensive program to calculate office and telephone expenses in order to proportionally distribute them to on-going projects based on project size, cost and times spent by supporting staffs. The new program will measure and distribute all office expenses more fairly and objectively among projects managed at each construction field office. The new program is expected to be implemented in near future.

- **Audit Finding:** "Caltrans does not have a formal policy and procedures in place to document personal phone calls on phones provided to Caltrans' field personnel".

Audit recommendation "...that Caltrans establish a procedure in capturing official business related cellular phone cost to their construction projects."

Caltrans policy for usage of cell phones provided by the state is strictly for state business. Construction staffs are not allowed to use state phones for personal use.

As matter of fact, Caltrans currently has no comprehensive program in place to fairly and systematically allocate cell phone expenses to on-going construction projects. The cell phone expense and usage have nevertheless been properly administered as the cost of cell phones issued to construction staffs are mainly based on contracts with wireless service provider that has set up in advance the total air times available in the plan as "basket" for each specific group of users.

Should you have any questions regarding this response, please contact Edward Andraos at (213) 897-7722 or Alberto Angelini at (213) 897-0208.

cc: Juanita Baier, A&I
Laurine Bohamera, A&I
William Lewis, Chief, Accounts Receivable Branch, DoFA
Judy Armstrong, Chief, Reimbursement Section, DoFA
Gloria Madriz, District 7 Reimbursement Accountant, DoFA
Cindy Wu, District 7 Reimbursement Accountant, DoFA